

MARK A. GOODMAN, ESQ.  
 Nevada State Bar No. 10357  
 GOODMAN LAW CENTER, P.C.  
 348 Mill Street  
 Reno, Nevada 89501  
 Telephone: (775) 473-4268  
 Facsimile: (775) 996-8787  
 Email: Mark@Goodmanlawnevada.com  
 Attorney for Defendants/Counterclaimants  
 WIND PUMP POWER, LLC  
 SUNFLOWER WIND, LLC  
 DAN RASURE

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

\* \* \* \* \*

NEVADA CONTROLS, LLC, a Nevada  
 Limited Liability Company,

Plaintiff,

v.

WIND PUMP POWER, LLC, a Kansas  
 Limited Liability Company, SUNFLOWER  
 WIND, LLC, a Kansas Limited Liability  
 Company; DAN RASURE, an individual,

Defendants.

WIND PUMP POWER, LLC, a Kansas  
 Limited Liability Company,

Counterclaimant,

v.

NEVADA CONTROLS, LLC, a Nevada  
 Limited Liability Company,

Counterdefendant.

) Case No. 3-12-cv-00068-HDM-VPC

) **SUNFLOWER WIND, LLC'S.**

) **OPPOSITION TO PLAINTIFF'S**

) **MOTION TO STRIKE ITS ANSWER**

COMES NOW, the Defendant, SUNFLOWER WIND, LLC ("Sunflower Wind"),

by and through its counsel of record, MARK A. GOODMAN, ESQ., of GOODMAN

LAW CENTER, P.C., and pursuant to the Court's "Amended Minutes of Proceedings" (Docket No. 74), filed June 12, 2013, herewith files its Opposition to the Motion to Strike its Answer, filed by the Plaintiff, NEVADA CONTROLS, LLC ("Nevada Controls"), which Motion is contained in "Plaintiff Nevada Controls' Motion to Compel" (Docket No. 57), filed April 18, 2013, at pages 10-12.

## **POINTS AND AUTHORITIES**

### **I**

#### **THE COURT SHOULD RESPECTFULLY DECLINE NEVADA CONTROL'S INVITATION TO STRIKE SUNFLOWER WIND'S ANSWER.**

Nevada Controls argues that the Court should strike Sunflower Wind's Answer because the five (5) factors articulated by the Ninth Circuit in *Connecticut General Life Ins. Co. v. New Images of Beverly Hills*, 482 F.3d 1091, 1096 (9th Cir. 2007), supposedly all militate strongly in favor of Nevada Controls. Sunflower Wind strongly disagrees. This most assuredly is not so.

#### **1. The Public Interest.**

In its Motion, Nevada Controls observes that it commenced this litigation more than a year ago, and that, although Sunflower Wind has filed an Answer, it has not otherwise participated in discovery. *See, id.*, p. 11, ll. 14-20. This observation is true insofar as it goes; however, it does not go far enough. To the extent that Sunflower Wind has not participated in discovery, it is simply because Sunflower Wind has nothing whatsoever to do with this case. Sunflower Wind closed for business on January 6, 2011, long before Nevada Controls even entered the picture; indeed, Nevada Controls has no basis in fact for even naming Sunflower Wind as a party defendant. At the very least,

1 Sunflower Wind has a meritorious defense in this case. Thus, this factor militates strongly  
2 in favor in Sunflower Wind, and does not militate in favor of Nevada Controls.

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4 2. The Court Docket.

5 In its Motion, Nevada Controls states that there have been “numerous changes to  
6 the case deadlines and schedules, which have been adjusted due to the Defendants’ delays  
7 in retaining counsel and in responding to discovery.” *See, id.*, p. 11, ll. 21-25 (emphasis  
8 added). This may very well be true, but most of these “changes” and “adjust[ments]” have  
9 had little or nothing to do with Sunflower Wind. Thus, this factor militates strongly in  
10 favor in Sunflower Wind, and does not militate in favor of Nevada Controls.

11  
12 3. The Risk of Prejudice.

13 In its Motion, Nevada Controls argues that it would be prejudiced “by the repeated  
14 delays in the case” and by Sunflower Wind’s “refusal to participate in the discovery.” As  
15 previously noted, to the extent that Sunflower Wind has not participated in discovery, it is  
16 simply because Sunflower Wind has nothing whatsoever to do with this case; furthermore,  
17 as previously noted, the “repeated delays in the case” have had little or nothing to do with  
18 Sunflower Wind. Thus, this factor militates strongly in favor in Sunflower Wind, and does  
19 not militate in favor of Nevada Controls.

20  
21  
22 4. The Public Policy Favoring Disposition of Cases on the Merits.

23 In its Motion, Nevada Controls acknowledges, as it must, that if the Court were to  
24 strike Sunflower Wind’s Answer, then there would not be a resolution of this case on its  
25 merits. *See, id.*, p. 12, ll. 1-4. As previously noted, and at the very least, Sunflower Wind  
26 has a meritorious defense in this case; furthermore, and as previously noted, Sunflower  
27 Wind has absolutely nothing whatsoever to do with this case. Thus, this factor militates  
28 HUGELY in favor in Sunflower Wind, and does not militate in favor of Nevada Controls.

## 5. The Availability of Less Drastic Sanctions.

In its Motion, Nevada Controls states that “[t]he Court has entered two orders compelling Sunflower Wind to provide its discovery responses, and it has also ordered the Defendants to pay a sanction in the form of Nevada Controls’ attorneys’ fees and costs.” *See, id.*, p. 12, ll. 5-14 (emphasis added). This may very well be true, but all of this had little or nothing to do with Sunflower Wind. Furthermore, in its Motion, Nevada Controls acknowledges, as it must, that the Court has not yet informed Sunflower Wind “that there is the potential for case-ending sanctions.” *See, id.*, p. 12, ll. 5-18. Thus, this factor militates strongly in favor in Sunflower Wind, and does not militate in favor of Nevada Controls.

In addition, pursuant to the Court’s “Amended Minutes of Proceedings” (Docket No. 74), filed June 12, 2013, Sunflower Wind simultaneously is providing its answers to Nevada Controls’ written discovery, even though Sunflower Wind has nothing whatsoever to do with this case.

## CONCLUSION

For all of the above-stated reasons, the Court respectfully should decline Nevada Control’s invitation to strike Sunflower Wind’s Answer in this case; to the contrary, the Court affirmatively should permit Sunflower Wind an opportunity to demonstrate that it has nothing whatsoever to do with this case, through appropriate discovery and motion

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1 practice.

2 DATED: Wednesday, June 19, 2013.

3 GOODMAN LAW CENTER

4 /s/ Mark A. Goodman

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6 MARK A. GOODMAN, ESQ.  
7 Nevada State Bar No. 10357  
8 GOODMAN LAW CENTER, P.C.  
9 348 Mill Street  
10 Reno, Nevada 89501  
11 Telephone: (775) 473-4268  
12 Facsimile: (775) 996-8787  
13 Email: [Mark@Goodmanlawnevada.com](mailto:Mark@Goodmanlawnevada.com)  
14 Attorney for Defendants/Counterclaimants  
15 WIND PUMP POWER, LLC  
16 SUNFLOWER WIND, LLC  
17 DAN RASURE  
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an agent of GOODMAN LAW CENTER, P.C., and that I caused a true and correct copy of **SUNFLOWER WIND, LLC'S. OPPOSITION TO PLAINTIFF'S MOTION TO STRIKE ITS ANSWER**, to be served by:

☐ (BY MAIL) on all parties in said action, by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. At the Law Offices of Goodman Law Center, P.C., mail placed in that designated area is given the correct amount of postage and is deposited that same date in the ordinary course of business, in a United States mailbox in the City of Reno, County of Washoe, Nevada.

☐ (BY PERSONAL DELIVERY) by causing a true copy thereof to be hand delivered this date to the addressee(s) at the address(es) set forth below.

☐ (BY FACSIMILE) on the parties in said action by causing a true copy thereof to be telecopied to the number indicated after the address(es) noted below.

☐ Federal Express or other overnight delivery

☐ Reno/Carson Messenger Service

addressed, as follows:

Leigh Goddard, Esq.	via this Court's ECF system
Jessica Woelfel, Esq.	
McDonald Carano Wilson LLP	
100 West Liberty Street, 10th Floor	
Post Office Box 2670	
Reno, Nevada 89505-2670	

DATED: Wednesday, June 19, 2013.

/s/ Paula Rodriguez

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PAULA RODRIGUEZ, CLA  
Legal Assistant to Mr. Goodman